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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,007	08/17/2004	Robert S. Lapeyre	2167.1	5006
9748	7590	03/09/2005	EXAMINER	
LAITRAM, L.L.C. LEGAL DEPARTMENT 220 LAITRAM LANE HARAHAN, LA 70123			DEUBLE, MARK A	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,007

Applicant(s)

LAPEYRE ET AL.

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,6,7,10,12,13 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8,9 and 14 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/17/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-2, 5, 8, 9, 11, and 14 in the reply filed on February 1, 2005 is acknowledged.
2. Claims 3-4, 6-7, 10, 12-13, and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 1, 2005.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonnet (U.S. Patent No. 5,921,378).

Bonnet '378 shows a conveying system comprising a conveyor 14 conveying articles in a direction of travel along a carryway. The conveyor includes a plurality of parallel slat members 18 having lateral parallel lateral tracks formed by slots 22 that extend in a direction transverse to the direction of travel. Transport elements 130 are arranged on the conveyor to ride along these tracks when driven by a motor 154 associated with each of the transport elements. Local controllers formed by contacts 170 are associated with each of the transport elements and its

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associated motor to control activation of the motor (see Fig. 12). Thus, Bonnet shows all the structure required by claims 1 and 9.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnet in view of Wood (U.S. patent No. 6,799,672) or WIPO document number WO02/024557 A1.

Bonnet shows generally all that is required by the claims except for the sensor of claim 2, the transceiver of claim 5, and the system controller of claim 8. However, both Wood and WIPO document number WO02/024557 A1 show sortation conveyors with a plurality of product transport elements 103 that are each associated with an actuating motor that causes the transport elements to discharge an item from the conveyor. The motors are each connected to a wireless local controller assembly formed by a motor controller 36 connected to a programmable controller 35 that communicates with a central controller 41 external to the conveyor via a transceiver formed by a radio frequency modem 34 or an I/O module 37 that transmits and receives message signals linking the system controller and the motor controller. The local controller assembly is connected to a sensor means so that the local controller assembly can transmit a signal indicative of a position along the carryway (see Wood col. 4, ln. 50-64). Wood and WIPO document number WO02/024557 A1 teach that wireless communication between the central control system and each transport unit advantageously ensures constant communication

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between the two so that any required command can be immediately relayed to the transport units and so that the system is no longer reliant on the positioning of each transport unit to achieve communication between the central control and each transport unit (see e.g. Wood col. 5, ln. 45-60). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide such a wireless local controller assembly to control the operation of the motors 154 of the conveyor of Bonnet. When this is done, the resulting conveyor would have all the structure required by claims 1-2, 5, and 8-9.

7. Claims 1, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson et al. (U.S. Patent No. 6,044,956) in view of Bonnet.

Henson et al. shows a conveying system comprising a slat conveyor 15 conveying articles in a direction of travel along a carryaway. The conveyor includes a plurality of parallel drag chains 20 driven in the direction of travel and a plurality of parallel slat members 22 having lateral parallel lateral tracks that are attached to the drag chains so that they span the drag chains in a direction transverse to the direction of travel. The slats 22 have slots formed therein in a direction transverse to the direction of travel along which a transport element 26 rides. However, instead of using a motor to drive the transport element, Henson et al. employs a guide means 28 rather than the motor and local controller required by claims 1, 9, and 14. Bonnet teaches that motors and local controllers may advantageously be associated with such transport elements to advantageously drive such transport elements independently of the underlying conveyor to eject items at varying speeds as may be desired (see col. 8, ln. 27-36). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the transport elements 26 of Henson et al. with individual motors and local controllers as taught by Bonnet.

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When this is done, the resulting conveyor would have all the structure required by claims 1, 9, and 14.

Allowable Subject Matter

8. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nitschke et al. and Heit et al. both show sortation conveyors with sensors for detecting the position of lateral pushers in a fashion similar to that of the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D Lillis can be reached on (703)308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md



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